

AG Jennings Sues Google for Antitrust Law Violation

Complaint alleges Google illegally maintains App Store monopoly

Attorney General Kathy Jennings announced Thursday that Delaware and other state have filed suit against Google, alleging exclusionary conduct relating to the Google Play Store for Android mobile devices and Google Billing. This antitrust lawsuit is the newest legal action against the tech giant, claiming illegal, anti-competitive, and unfair business practices.

The complaint, filed Wednesday evening, accuses Google of using its dominance to unfairly restrict competition with the Google Play Store, harming consumers by limiting choice and driving up app prices.

“We’re holding Google accountable for its illegal monopoly on the digital market,” said Attorney General Jennings. “Google routinely and systematically uses its market share to exploit other businesses and smother competition. It is a Goliath that uses a flat-out predatory business strategy to ensure that nobody can challenge its dominance of the tech space. That’s bad for competition and bad for consumers. Antitrust laws are a cornerstone of a healthy market, and we will continue to defend and uphold those laws, no matter who breaks them.”

The lawsuit alleges that Google works to discourage or prevent competition, violating federal and state antitrust laws through its exclusionary conduct, which substantially shuts out competing app distribution channels. Google also requires developers that offer their apps through the Google Play Store to use Google Billing as a middleman. This arrangement forces app consumers to pay Google’s commission—up to 30%—on in-app

purchases of digital content made by consumers through apps that are distributed via the Google Play Store. This commission is much higher than what consumers would pay if they had the ability to choose one of Google's competitors instead.

This arrangement reneges on Google's earlier promises to app developers and device manufacturers. When Google launched its Android OS, it originally marketed it as an "open source" platform that would allow developers to create compatible apps and distribute them without unnecessary restrictions. By promising to keep Android open, Google successfully enticed "OEMs"—mobile device manufacturers—such as Samsung and "MNOs"—mobile network operators such as Verizon—to adopt Android, and more importantly, to forgo competing with Google's Play Store at that time. Once Google reached a critical mass of Android OS adoption, it moved to close the Android OS ecosystem—and the Android App Distribution Market—to any effective competition by, among other things, requiring OEMs and MNOs to enter into various contractual restraints. These restraints disincentivize and restrict OEMs and MNOs from competing (or fostering competition) in the relevant market. The lawsuit alleges that Google's conduct constitutes unlawful monopoly maintenance, among other claims.

- The states allege that Google also engaged in the following conduct, all aimed at enhancing and protecting Google's monopoly position over Android app distribution:
- Google imposes technical barriers that strongly discourage or effectively prevent third-party app developers from distributing apps outside the Google Play Store. Google builds into Android a series of security warnings (regardless of actual security risk) and other barriers that discourage users from downloading apps from any source outside Google's Play Store, effectively foreclosing app developers and app

stores from direct distribution to consumers.

- Google has not allowed Android to be “open source” for many years, effectively cutting off potential competition. Google forces OEMs that wish to sell devices that run Android to enter into agreements called “Android Compatibility Commitments” or ACCs. Under these “take it or leave it” agreements, OEMs must promise not to create or implement any variants or versions of Android that deviate from the Google-certified version of Android.
- Google’s required contracts foreclose competition by forcing Google’s proprietary apps to be “pre-loaded” on essentially all devices designed to run on the Android OS, and requires that Google’s apps be given the most prominent placement on device home screens.
- Google “buys off” its potential competition in the market for app distribution. Google has successfully persuaded OEMs and MNOs not to compete with Google’s Play Store by entering into arrangements that reward OEMs and MNOs with a share of Google’s monopoly profits.
- Google forces app developers and app users alike to use Google’s payment processing service, Google Play Billing, to process payments for in-app purchases of content consumed within the app. Thus, Google is unlawfully tying the use of Google’s payment processor, which is a separate service within a separate market for payment processing within apps, to distribution through the Google Play Store. By forcing this tie, Google is able to extract an exorbitant processing fee as high as 30% for each transaction and which is more than ten times as high as the fee charged by Google’s competitors.

Delaware’s suit is part of a bipartisan, multistate effort co-led by attorneys general in Utah, New York, North Carolina, and Tennessee, and joined by Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Idaho, Indiana,

Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Vermont, Virginia, Washington, West Virginia, and the District of Columbia.